

ARKANSAS COURT OF APPEALS
ANDREE LAYTON ROAF, JUDGE
NOT DESIGNATED FOR PUBLICATION

DIVISION III

CACR05-1359

June 14, 2006

CHRISTOPHER MORRIS

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM SEBASTIAN COUNTY
CIRCUIT COURT
[NO. CR-2002-320, 321, 322]

HONORABLE J. MICHAEL FITZHUGH,
CIRCUIT JUDGE

AFFIRMED

Appellant Christopher Morris was charged with commercial burglary and theft of property; as a result, the trial court revoked his probation and sentenced him to ninety-six months in the Arkansas Department of Community Correction. Morris appeals, arguing that the State did not prove by a preponderance of the evidence that he violated a condition of his probation. We affirm.

On August 14, 2002, Morris pled guilty to three counts of conspiracy to deliver methamphetamine and was sentenced to five years' imprisonment plus an additional ten years' suspended imposition of sentence conditioned upon good behavior. The written terms and conditions of suspended sentence provided that Morris "shall not violate any federal, state, or municipal law . . . and shall not possess or use marijuana, narcotic, or any other drug or controlled substance" Morris was released on parole from the Arkansas Department of Correction on June 9, 2003.

On June 25, 2005, several people called the police to report a break-in at the Central Baptist Church in Fort Smith. When officers arrived at the scene, they discovered that the front glass of the church's daycare facility had been broken out with a brick.

At Morris's revocation hearing, Yvonne Sallee testified that on the morning in question, at around 7:45 a.m., she noticed that the church bus across the street "looked like it had legs dangling out the back of it, barefooted." She saw someone jump off the bus and try to open the door of the bus; when the man could not open the bus door, he went around the south side of the church and tried to open those doors. Sallee then called the police. She identified Morris from a photo lineup but told police she was not positive; however, she testified that she was certain that the man sitting at the defendant's table was the same man she saw trying to get into the church.

Sarah Martin testified that she was a preschool teacher at the Central Prep Center, which was a part of Central Baptist Church. On the morning of the break-in, she got to the daycare around 8:00 a.m. and noticed broken glass, so she got back into her car to go to a phone. En route to the phone, Martin saw someone trying to jiggle the doorknob to the church. She observed the man go to two of the church's side doors. She then pulled into a driveway next to the church and honked her horn at the man. The man then turned and began to walk towards her car, at which point she backed out and proceeded to a payphone to call the police. Martin positively identified Morris from a photo line-up and in open court.

Officer Billy Moore testified that after arriving at the church on the morning of June 25, he and Officer Kathy Wald searched the building but were unable to locate anyone. Several of the rooms inside the church were unlocked and the main office door was standing open. Officer Moore observed that glass had been tracked all through the building. The officers on the scene then began

to search the area for the suspect, whom witnesses had described as tall, slender, dark-headed, and barefooted with dark clothing. Officers located Morris at the Assembly of God Church and noted that he fit the description of the perpetrator. Officer Moore handcuffed Morris and read him his rights. When Officer Moore asked Morris why he had broken into the church, Morris replied that he was on drugs and needed help and was hoping that he could find some way that he could be saved inside the church. After conducting a pat-down, Officer Moore discovered a key to the church office in Morris's front pocket.

Officer Tom Judkins testified that Morris provided a post-arrest statement. Officer Judkins typed up the statement, but Morris refused to sign it. Officer Judkins stated that Morris confessed that he went to the church to talk to God. Morris stated that he knocked on the church doors, but when he got no answer, he went around to the back and slept inside a van parked there. The next morning, Morris again knocked on the door, and when there was still no answer, he picked up a brick and threw it through a glass window. Morris also told Officer Judkins that he (Morris) did not know where the key found in his front pocket came from.

Morris testified that he did indeed tell Officer Moore that he was on drugs and needed help. Morris also confirmed that he broke into the church but claimed that he was not trying to steal anything. He stated that June 25 was a bad day because he lost his job and his girlfriend because of his addiction to methamphetamine and also wrecked his car. He stated that he was "pretty much fed up with life" and that he broke into the church to kill himself but found that he did not want to die. Morris claimed that the church was a familiar and comforting place because he had attended the church during his youth. Morris also testified that he had a drug problem since the age of thirteen or fourteen and that he had never been in a proper counseling program.

The trial court found that Morris had violated a condition of his release and sentenced Morris to twenty-five years - eight years in the Arkansas Department of Correction and a seventeen-year suspended sentence.

Morris argues on appeal that the trial court's decision to revoke was clearly against the preponderance of the evidence because the State failed to prove that he violated a condition of his probation. Morris specifically argues that the trial court erred in allowing the State to introduce statements Morris made to Officers Moore and Judkins and that without the statements, the State cannot prove that he committed commercial burglary in violation of his probation. Morris asserts that these statements were not given voluntarily.

If a court finds by a preponderance of the evidence that a defendant has inexcusably failed to comply with a condition of his probation, it may revoke the probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2005). The State has the burden to prove a violation of a condition of probation by a preponderance of the evidence. *Lemons v. State*, 310 Ark. 381, 836 S.W.2d 861 (1992). This burden is not as great in a revocation hearing, however, because evidence that is insufficient for a criminal conviction may be sufficient for revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). The trial court's findings will be upheld unless they are clearly against the preponderance of the evidence; and because the determination of a preponderance of the evidence turns on the questions of credibility and weight to be given testimony, on review, the appellate courts will defer to the trial judge's superior position. *Id.*

Morris objected to Officer Moore's testimony as a discovery violation and claimed that the testimony should be stricken because Officer Moore failed to have Morris sign a written waiver of

rights form. Morris objected to the introduction of his statement to Officer Judkins based on his refusal to sign the typewritten statement, contending that it proved that the statement was inaccurate.

However, even if the statements at issue violated *Miranda*, Morris is not entitled to suppress the statements in a revocation proceeding. *See Fitzpatrick v. State*, 7 Ark. App. 246, 647 S.W.2d 480 (1983). Additionally, any improper admission would constitute harmless error because the testimony was cumulative of other evidence that tended to prove that Morris violated the terms of his probation. *See Jones v. State*, 31 Ark. App. 23, 786 S.W.2d 851 (1990). Morris corroborated these statements during his own testimony. He admitted that he told Officer Moore that he broke into the church and needed help. Morris also told the court that he had a drug problem and that things had gotten so bad in his life that he had broken into the church to kill himself. Morris admitted throwing the brick through the church window but claimed that he did not intend to steal anything. Furthermore, the witnesses, Sallee and Martin, identified Morris as the perpetrator from a photo line-up and in open court. The police found a brick thrown through a window and glass tracked throughout the church. In addition, the police found the key to the church's office in Morris's front pocket.

Finally, the trial court indicated that Morris was also charged with commercial burglary at the end of the revocation proceedings; however, Morris's actions could constitute other violations such as criminal trespass or breaking and entering. *See Selph v. State*, 264 Ark. 197, 570 S.W.2d 256 (1978). Thus, Morris's contention that he did not intend to steal anything from the church is meaningless. Revocation hearings require a lesser burden of proof, and here, the State established by a preponderance of the evidence that Morris violated the conditions of his probation by breaking into the church and by his admission that he continued to abuse drugs.

Affirmed.

GLOVER and NEAL, JJ., agree.